



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18VAC50-22
Regulation title	Temporary Licenses
Action title	Board for Contractors Temporary License Provisions
Date this document prepared	April 26, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board for Contractors seeks to amend its regulations to include "Temporary Licenses" among the types of licenses issued. The proposed amendments include the addition of a definition of Temporary Licenses, establishment of eligibility criteria for such a license, list the fees associated with such a license and identify other administrative requirements.

These proposed regulations would replace the emergency regulations that have been in effect since March 2, 2011.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-1102 of the Code of Virginia, states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 11 of Title 54.1. Section 54.1-201.1 authorizes regulatory boards within the Department of Professional and Occupational Regulation to issue temporary licenses and certificates to applicants that meet specified criteria.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed amendments address temporary licensure for Contractor entities pursuant to Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792. The amendments state that the Board for Contractors will issue temporary licenses.

The amendments to the statutes introduce “Temporary License” to the regulatory authority of the Board for Contractors. These regulations will define entry requirements, list fees and the disciplinary authority of the Board for this license.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The Board seeks to amend its Regulations to include a definition and fee for “temporary licenses” and to bring “temporary license” holders under the Board’s jurisdiction and disciplinary authority.

18 VAC 50-22-10 (General definitions): General definitions and definitions of classifications and specialties were amended to add “temporary licenses” among the definitions and list of licenses issued by the Board for Contractors.

18 VAC 50-22-65: Amending the regulations to include entry requirements for “temporary license” applicants. This amendment also indicates the length of time for which a “temporary license” is valid and that a “temporary license” is not eligible for renewal or reinstatement.

18 VAC 50-22-66: Amending the regulations to include the Board for Contractors’ disciplinary authority over “temporary license” holders. This amendment also makes working on an expired “temporary license,” who have not obtained an equivalent license, against the law.

18 VAC 50-22-100: Amending the regulations to include a “temporary license” fee of \$50.00.

Other changes which may be necessary may also be considered.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

1. In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, respond to statutory changes. By qualifying for a temporary license, a business entity will be permitted to bid upon or actually commence construction projects within the Commonwealth while working to meet examination, education and other eligibility criteria. In order to meet the current criteria contractor business entities may spend up to a month to schedule and complete the pre-license education requirements, study for and successfully complete the exam, and submit all required documentation. The ability to start a project while working to meet these criteria allows the business entity to hire individuals and properly licensed sub-contractors to work. This allows those individuals and employees of the sub-contractor to start receiving compensation sooner, putting people to work sooner and, as a result, putting more money into the economy. This is a distinct advantage to the public.
2. The implementation of these regulations will have a positive impact on the Commonwealth in that it will allow individuals to work sooner than would normally be occurring as the contractor holding a temporary license could start while working to meet current eligibility requirements. By starting to work sooner, these individuals are receiving money sooner and, subsequently, spending money sooner thus contributing to the local economy.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in federal law.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, fax to (804) 1-866-430-1033, or email to contractors@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

Summary:

The Board is amending the regulations to include temporary licenses available to out of state contractors that hold licenses in good standing in another state. The proposed amendments include the licensing requirements, the associated fees, and the disciplinary authority of the Board for the temporary licenses.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2011	FY 2012	FY2013	FY2014
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: None are expected.

Ongoing: None are expected.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The revised regulations only apply to those contractor applicants that hold licenses in other states and desire to obtain a temporary license..

Estimated Number of Regulators: There are expected to be approximately 12 temporary license applicants per year.

Projected Cost to Regulators: The cost to Applicants for the Temporary Contractor License is \$50 in addition to the regular initial contractor application fees.

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>	
2008-10	2,419,086	14,503,793	15,957,903	964,976	6.0%	95,407	as of
2010-12	964,976	20,219,109	19,653,858	1,530,227	7.8%		6/30/2010
2012-14	1,530,227	20,843,853	20,876,800	1,497,280	7.2%		
2014-16	1,497,280	20,843,853	21,664,490	676,643	3.1%		

Fee History \$

<u>Major Fee Type</u>	<u>2007</u>	<u>2010</u>
Individual Application	90	130
Individual Renewal	40	90
Class A Contractor Application	200	360
Class A Contractor Renewal	165	240

**Financial Status and Projections
Proposed Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>	as of 6/30/2010
2008-10	2,419,086	14,503,793	15,957,903	964,976	6.0%	95,407	
2010-12	964,976	20,219,709	19,653,858	1,530,827	7.8%		
2012-14	1,530,827	20,845,053	20,876,800	1,499,080	7.2%		
2014-16	1,499,080	20,845,053	21,664,490	679,643	3.1%		

Fee History \$

<u>Major Fee Type</u>	<u>2007</u>	<u>2010</u>	<u>2011</u>
Individual Application	90	130	130
Individual Renewal	40	90	90
Class A Contractor Application	200	360	360
Class A Contractor Renewal	165	240	240
Temporary License Fee			50

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since this is a new program no other alternatives exist for amending the regulations in order to bring them into compliance the Code of Virginia. At this time, no alternative has been established for amending current definitions, the procedures for obtaining a temporary license, or the fees associated with this program, however, it is likely that many alternatives will be presented during the public comment periods.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

- 1) These proposed regulations establish compliance or reporting requirements equal to or less stringent than those already in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) There are no reporting requirements proposed by these regulations.
- 4) There are no performance standards proposed by these regulations.
- 5) The overwhelming majority of businesses licensed as contractor by the Board for Contractors are small businesses, subsequently, every regulatory action undertaken by the Board affects small businesses and the standards are developed in a way to be the least burdensome to these businesses. Since this regulation has a positive impact, exempting small businesses would be more burdensome.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Timothy Evans	In the event of a decertification in regards to the NFLPA, what temporary professional license qualifications will be required in the event of a NFL Lockout?	The regulations proposed by the Board for Contractors concerns the licensing and conduct related to those businesses engaged in work within the construction industry. The comment you made is related to a profession not under the authority of the Board for Contractors.
Customer Service Express Digital Images	I am looking for small business regulations as they pertain to the following services: color copies, club flying printing, business brochure printing, custom	The regulations proposed by the Board for Contractors concerns the licensing and conduct related to those businesses engaged in work within the construction industry. The comment you made is

	presentation folders, pocket folder printing, custom poster printing, table tent printing.	related to a profession not under the authority of the Board for Contractors.
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Some of the changes proposed are administrative in nature and add “temporary license” to the general definitions section of the Regulations and add the fees associated with obtaining a “temporary license.”

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC50-22-10		General Definitions	The general definitions section will now include the definition of a “temporary license” under Board for Contractors jurisdiction. The definition of “Temporary license” refers to Virginia Code §54.1-201.1 and refers to the requirements necessary to obtain a “temporary license” as well as how long the “temporary license” is valid and what the “temporary license” authorizes the

			license holder to do. "Temporary licenses" will make it faster for an out-of-state licensed contractor to obtain a Virginia contractor license rather than waiting to meet all eligibility requirements.
18VAC50-22-100		Fees	The fees section will now include the fee required for a "temporary license" application fee under the Board for Contractors. The fee to obtain a "temporary license" is \$50.00, in addition to the initial licensure fee.
	18VAC50-22-65	Temporary Licenses	The "temporary licenses" section outlines the requirements necessary to apply for and obtain a temporary license. These requirements include being currently licensed in another state, supplying verification of that license, paying a "temporary license" fee, paying the initial licensure fee, and submitted both a "temporary license application" simultaneously with a permanent license application. This section also lays out that "temporary licenses" cannot be reissued, renewed or reinstated. Additionally, this section indicates that any entity or person working on an expired "temporary license" and who has not obtain a comparable permanent license can be prosecuted under Virginia Code §54.1-111 (A).
	18 VAC50-22-66		This new section outlines the Board's disciplinary authority over Temporary Licenses. This section makes "temporary license" holders subject to the disciplinary process of the Board as well as all Board laws and regulations.